

EXHIBIT A

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MICHIGAN ASSOCIATION OF NON-
PUBLIC SCHOOLS, et al.

Case No. 1:20-cv-01174-PLM-PJG

Hon. Paul L. Maloney

Plaintiffs,

v.

ROBERT GORDON, in his official capacity as
the Director of the Michigan Department of
Health and Human Services,

Defendant.

_____ /

AFFIDAVIT

I, Arnold Markowitz, M.D., hereby declare as follows:

1. I am over the age of 21 years and competent to make this declaration under 28 U.S.C. § 1746.

2. I have not been convicted of a felony or a crime involving deceit or dishonesty.

3. I received my medical degree from Wayne State University School of Medicine in 1971.

4. I completed my fellowship at Wayne State University affiliated hospitals in 1976.

5. I am a physician licensed to practice in Michigan. I am board certified in internal medicine. I am licensed, certified, and spend the majority of my professional time in active clinical practice and instruction of infectious disease and internal medicine.

6. I am the chairman of the infectious disease prevention department at St. Joseph Mercy Oakland Hospital in Pontiac, Michigan.

7. I am also the head of infectious control department at Pontiac General Hospital in

Pontiac, Michigan.

8. I am familiar with SARS-CoV-2 (“the virus”) and the disease it causes, COVID-19. I am also familiar with the research on how the virus is transmitted and contained and its mechanisms of disease, morbidity, and mortality.

9. The opinions I express in this affidavit are my medical opinions and consistent with established medical and scientific research.

10. The virus is principally transmitted through respiratory droplets or aerosol.

11. Close personal contact poses a risk of transmitting the virus because a person who is infected with the virus can transmit it through respiratory droplets or aerosol emitted through breathing, sneezing, talking, and similar actions.

12. Once respiratory droplets or aerosol are emitted into the air, they linger for a period of time that is affected by, among other factors, humidity and circulation.

13. The longer a person who is infected with the virus is in close proximity to someone else, the greater the chance that the virus will be transmitted, but the risk of transmission is not meaningfully higher after fifteen minutes. This means, for example, that if two persons are conversing in person for twenty minutes, and all other factors being equal, the risk of transmission is not meaningfully higher if they conversed for two hours.

14. The spread of the virus can be limited if consistent safety measures are put in place including, but not limited to the following:

- a. Maintaining distance of six feet whenever possible between persons.
- b. Systematic use of facial coverings capable of limiting droplet or aerosol transmission.
- c. Routine use of handwashing/hand sanitizer especially before and after using restrooms, meals, and interactive activities.
- d. Purifying air or maintaining a circulation of clean air.

- e. Providing the ability for high-risk persons to opt out of activities without consequence.
- f. Close monitoring for symptoms and quick isolation of potential cases and close contacts.
- g. Access to effective testing mechanisms to ensure safe return to interactive settings and knowledge of CDC recommendations for when this should happen.

15. The best available scientific research suggests that schools with proper safety measures in place are not significant drivers in spreading the virus.

16. The best available scientific research suggests that adolescents under the age of 20 are significantly less susceptible to contracting and spreading the virus than adults.

17. The best available data reveals that infection rates among children are much lower than in adults.

18. The best available scientific research suggests that there is no significant student-to-teacher transmission in a school setting where proper safety measures are followed.

19. In the case of schools with robust safety measures in place, the average student is more likely to contract the virus outside of school, where safety protocols are more lax, than in school, where they are regularly enforced.

20. I have read the affidavits of Michael Nalepa and Gregory Reichert concerning Everest Collegiate High School and Academy (“Everest”) filed in this case.

21. I am familiar with the class sizes at Everest and the specific protocols and procedures currently in place at that school related to preventing the spread of the virus.

22. I have read the affidavit of John DeJak concerning Father Gabriel Richard High School (“Gabriel Richard”) filed in this case.

23. I am familiar with the class sizes at Gabriel Richard and the specific protocols and procedures currently in place at that school related to preventing the spread of the virus.

24. I have read the affidavit of Dominic Iocco concerning Lansing Catholic High School (“Lansing Catholic”) filed in this case.

25. I am familiar with the class sizes at Lansing Catholic and the specific protocols and procedures currently in place at that school related to preventing the spread of the virus.

26. I have reviewed and am familiar with the Centers for Disease Control (“CDC”) guidelines for schools that were filed in this case. (ECF No. 1-12.)

27. The protocols and procedures in place at Everest, Gabriel Richard, and Lansing Catholic (“the Schools”) are consistent with the guidance from the CDC.

28. I have reviewed and am familiar with the guidance document by the American Academy of Pediatrics (“AAP”) that was filed in this case. (ECF No. 1-13.)

29. The protocols and procedures in place at the Schools are consistent with the guidance from the AAP.

30. Based upon my review of the aforementioned affidavits, documents, my own medical training, and my review of the relevant medical and scientific research, the transmission of the virus is substantially less likely to occur through in-person instruction at the Everest, Gabriel Richard, and Lansing Catholic (“the Schools”) than through numerous other activities, including but not limited to the following:

- a. Participation in sports such as football, basketball, and hockey, especially if these activities take place indoors or the participants are unmasked;
- b. The reception or provision of a tattoo if that process takes more than 15 minutes;
- c. The reception or provision of hair styling services if that process takes more than 15 minutes;
- d. The reception or provision of a massage if that process takes more than 15 minutes;

- e. Traveling on a bus or other public transit with others for 15 minutes or more;
- f. Conversing at a library or museum for 15 minutes or more;
- g. Indoor gatherings at residential homes where multiple households gather;
- h. Gatherings for 15 minutes or more in shared spaces such as at airports, bus stations, food service establishments, shopping malls, or public pools;
- i. Gathering at child-care organizations, after school programs, or camp settings;
- j. Gatherings for in-person CPR courses or swimming instruction;
- k. Patronizing or working in a certain retail environments for 15 minutes or more;
- l. Patronizing or working in a gym setting for 15 minutes or more.

31. The risk of spreading the virus is not affected by the reason why people are gathering together indoors, if the physical risk factors are comparable.

32. Based upon my review of the aforementioned affidavits, my own medical training, and my review of the relevant medical and scientific research, the transmission of the virus is no more likely to occur in a classroom in one of the Schools than during the following in-person activities:

- a. Instruction at a trade school or career school if that instruction takes place for 15 minutes or more;
- b. Delivering career and technical education services if that instruction takes place for 15 minutes or more;
- c. Instructing pupils who are English Language Learners or participants in special education services, if that instruction takes place for 15 minutes or more;
- d. Providing tutoring and academic support, if those activities take place for 15 minutes or more;
- e. Providing physical and mental health care services, if that activity takes place for 15 minutes or more.

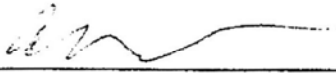
33. The spread of the virus is mitigated when accurate and timely contact tracing can be performed, especially when the persons with whom an infected person interacted are known and limited.

34. The risk of the virus spreading undetected is lower at the Schools, where contract tracing measures are in place, than at retail stores and other public gathering places where those measures are not feasible.

I declare under penalty of perjury that the foregoing is true and correct.

12-12-20

Executed



Signature

ARNOLD M. ANKOWITZ M.D.